

113 By reason of these breaches of duty, the Funds have suffered loss and damage. The Funds repeat paragraph 108 above.

Claim against FIM for negligent misstatement

114 Further or alternatively, as set out in paragraph 43 above, under the Consulting Services Agreements, the services to be provided by FIM included the provision of advice on various matters and the preparation of various reports. In particular, by clause 8 of the agreements, FIM agreed:

114.1 to provide such assistance, information and reports as Kingate Management and the auditors of the Funds required, in connection with:

114.1.1 the preparation of valuations in respect of the Funds;

114.1.2 the preparation by Kingate Management of periodic reports for submission to the Funds; and

114.1.3 the provision of annual, semi-annual and other reports for the benefit of investors and prospective investors in the Funds, whether published by the Funds or Kingate Management; and

114.2 to report to the boards of the Funds the performance of the Funds and other matters related to the management of their assets.

115 Pursuant to these obligations, FIM did produce various reports including, in respect of each Fund:

115.1 monthly performance summaries ("**Performance Summaries**"); and

115.2 quarterly reports to the board of Kingate Management ("**Board Reports**").

116 FIM prepared the Performance Summaries and the Board Reports on the basis of information provided by BLMIS, including the Monthly Statements.

117 The Performance Summaries:

117.1 were provided by FIM to Kingate Management;

117.2 in turn, were distributed by Kingate Management to investors in the Funds:

117.2.1 prior to May 2008, with the wording "*This document has been prepared by [FIM]*"; and

117.2.2 since May 2008, with the wording "*This document has been prepared by [Kingate Management]*";

117.3 set out (inter alia):

117.3.1 the fund's net return for the month in question;

117.3.2 the fund's year-to-date return and annual returns since establishment; and

117.3.3 since May 2008, in general terms:

117.3.3.1 the investments in assets made by the fund during the month in question; and

117.3.3.2 the performance of the different classes of assets, during that month. For example, the Performance Summary for May 2008 for Kingate Global stated:

"Kingate USD started the month approximately 33% invested in the typical basket of S&P 100 Index stocks, long the related S&P 100 Index puts and short S&P 100 index calls, with the rest of the portfolio invested in Treasury Bills. At the beginning of May a further basket of stocks (with related put and call options) was purchased. By the end of the month, all stocks were sold and the corresponding S&P 100 Index options positions were closed down. At month end the portfolio was fully invested in Treasury Bonds.

In May, options provided the majority of the gain in the portfolio, with dividends also contributing modestly. In contrast to April, the basket of common stocks and Treasury Bills detracted slightly from the overall performance".

118 The Board Reports:

118.1 were provided by FIM to the board of Kingate Management;

118.2 were also provided by FIM to the boards of the Funds; and

118.3 set out (inter alia), in more detail than the Performance Summaries:

118.3.1 the fund's net return for each month of the quarter in question;

118.3.2 the investment in assets, namely, equities, options and Treasury Bills, made by the fund during each month;

118.3.3 the performance of the different classes of assets during that month;

118.3.4 the fund's total assets at the end of the quarter in question; and

118.3.5 since the fourth quarter 2006, the year to date profit for the fund.

- 119 By reason of the following facts and matters, FIM owed to the Funds a tortious duty to take reasonable care to ensure that the statements made in the Performance Summaries and/or the Board Reports were true:
- 119.1 FIM knew, or ought to have known, or intended that the Funds would, or would be likely to rely on the statements made in the Performance Summaries and/or the Board Reports. In particular, FIM knew, or ought to have known, or intended that:
- 119.1.1 the Performance Summaries were distributed by Kingate Management to investors in the Funds;
- 119.1.2 the Board Reports were provided by FIM to the boards of the Funds; and
- 119.1.3 Kingate Management would, or was likely to rely on the statements made in the Performance Summaries and/or the Board Reports in the performance and/or delegation of the performance of its services under the Manager Agreements, which would have a direct and substantial effect on the Funds.
- 119.2 Given this, and in all the circumstances, FIM assumed a responsibility to the Funds to take reasonable care to ensure that the statements made in the Performance Summaries and/or the Board Reports were true.
- 120 The Funds in fact relied on the statements made in the Performance Summaries and/or the Board Reports by:
- 120.1 not questioning with Kingate Management (or its delegates or FIM) the investment strategy decided upon by Kingate Management (and/or FIM), of investing all monies raised from investors exclusively with BLMIS; and
- 120.2 continuing to transfer all such monies to BLMIS for investment.
- 121 The Performance Summaries and/or the Board Reports contained material misstatements. In particular:
- 121.1 As set out in paragraph 54 above, as a result of Mr Madoff's fraud:
- 121.1.1 none of the monies transferred by the Funds to BLMIS were invested in assets;
- 121.1.2 none of the assets reported in BLMIS' Monthly Statements existed; and
- 121.1.3 no returns were produced by either fund.

121.2 Accordingly, the statements in the Performance Summaries and/or the Board Reports in respect of the assets in which each fund had invested, and their returns, were false.

122 In breach of the duty set out in paragraph 119 above, FIM failed to take reasonable care to ensure that the statements made in the Performance Summaries and/or the Board Reports were true. In particular:

122.1 FIM failed, adequately or at all, to assess critically or independently to verify the information provided by BLMIS, including the Monthly Statements, on the basis of which FIM prepared the Performance Summaries and/or the Board Reports. In particular, FIM failed, adequately or at all:

122.1.1 independently to verify the existence or value of the assets in which BLMIS had purportedly invested the Funds' monies – for example, by requesting any certificate of title from an independent third party;

122.1.2 independently to verify that the trades by which BLMIS had purportedly invested the Funds' monies had actually taken place, at the reported prices – for example, by comparing the reported prices of the purported trades with the range in prices actually traded in the market on the day/s in question;

122.1.3 critically to assess or independently to verify the volumes of those trades, including how they could be accomplished without impacting the market; and/or

122.1.4 critically to assess or independently to verify the existence of the counter-parties to those trades, or their ability to perform their obligations.

122.2 More generally:

122.2.1 FIM failed to conduct any, or any adequate on-going due diligence on BLMIS and/or monitoring of BLMIS' performance of the investment advisory services which Kingate Management had delegated to BLMIS. The Funds repeat paragraph 111.2 above.

122.2.2 FIM failed, adequately or at all, to disclose to the Funds:

122.2.2.1 the existence of any 'red flags' surrounding the operations of BLMIS of which it was aware, or should have been aware;

122.2.2.2 any particular on-going risks in relation to BLMIS, and the Funds' investment strategy of investing all monies raised from investors exclusively with BLMIS, of which it was, or should (if it had conducted reasonable due diligence) have been aware.

- 123 For the avoidance of doubt, and if necessary, the Funds aver that these breaches of duty, individually or collectively, amounted to "gross negligence" by FIM, within the terms of the purported exclusionary provisions in the Consulting Services Agreements.
- 124 By reason of these breaches of duty, the Funds have suffered loss and damage. The Funds repeat paragraph 108 above.

Remedy against FIM for breach of tortious duty of care and/or negligent misstatement

- 125 By reason of the claims set out in paragraphs 110-113 and 114-124 above, the Funds are entitled to damages against FIM, to be assessed.

Claim against Mr Grosso and Mr Ceretti for breach of tortious duty of care

- 126 By reason of the following facts and matters, Mr Grosso and Mr Ceretti personally, as directors of FIM Ltd, and principals of FIM Advisers, owed to the Funds a tortious duty to exercise reasonable skill and care in their dealings with and in relation to the Funds:
- 126.1 Mr Grosso and Mr Ceretti assumed a personal responsibility to the Funds to take care in their dealings with and in relation to the Funds. In particular:-
- 126.1.1 As set out in paragraphs 3-10, 18-21, 30-31, 78 and 110.2.2 above:
- 126.1.1.1 Mr Grosso and Mr Ceretti were the individuals behind the establishment of the Funds and, at the same time, Kingate Management;
- 126.1.1.2 Mr Grosso and Mr Ceretti are, and were at all material times, the ultimate beneficial owners of the shares in Kingate Management;
- 126.1.1.3 Mr Grosso and Mr Ceretti are, and were at all material times, the directors and controlling shareholders of FIM Ltd, and the principals of FIM Advisers;
- 126.1.1.4 Kingate Management and FIM were the corporate vehicles of Mr Grosso and Mr Ceretti, for the receipt of fees from the Funds;
- 126.1.1.5 accordingly, the corporate and contractual structure, which purported to create separate legal personalities and relationships of liability, did not reflect reality but was a structure of convenience for the benefit of Mr Grosso and Mr Ceretti,
- 126.1.2 As directors (and controlling shareholders) of FIM Ltd, Mr Grosso and Mr Ceretti were together the directing mind and will of FIM Ltd, and the company was their alter ego. In the same way, as principals of FIM Advisers, Mr Grosso and Mr Ceretti were together the

directing mind and will of FIM Advisers and the limited liability partnership was their alter ego.

126.1.3 As directors (and controlling shareholders) of FIM Ltd, and principals of FIM Advisers, Mr Grosso and Mr Ceretti:

126.1.3.1 had some dealings with BLMIS and/or Mr Madoff and/or his associates, both before the establishment of the Funds and afterwards, in connection with the performance of FIM's services under the Consulting Services Agreements;

126.1.3.2 had regular dealings with Kingate Management, in connection with the performance of FIM's services under the Consulting Services Agreements; and

126.1.3.3 had regular dealings with the Funds in that connection, including personal exchanges with the boards of the Funds and investors.

126.1.4 As a result, at all material times, there was direct and substantial contact between Mr Grosso and Mr Ceretti and the Funds.

126.1.5 These facts and matters, taken together, were sufficient to convey to the Funds that Mr Grosso and Mr Ceretti were each willing to assume a personal responsibility to the Funds.

126.2 Accordingly (and notwithstanding the corporate and contractual structure), the Funds in fact relied on Mr Grosso and Mr Ceretti to take care in their dealings with and in relation to the Funds.

126.3 In all the circumstances, that reliance was reasonable. In particular:

126.3.1 The Funds repeat paragraphs 126.1.1-126.1.5 above.

126.3.2 As a result of their dealings with and in relation to the Funds, Mr Grosso and Mr Ceretti held themselves out as having appropriate skills and experience.

126.3.3 As a result of the reality behind the corporate and contractual structure, Mr Grosso and Mr Ceretti had control over the Funds' investments.

126.3.4 As Mr Grosso and Mr Ceretti were aware, the Funds received no advice in respect of their investments, save from FIM/Kingate Management/BLMIS, which advice was not independent.

126.4 In all the circumstances, Mr Grosso and Mr Ceretti knew or ought to have known of this reliance.

127 In their dealings with and in relation to the Funds, Mr Grosso and Mr Ceretti breached this tortious duty. In particular:

127.1 Mr Grosso and Mr Ceretti failed to conduct any, or any adequate on-going due diligence on BLMIS and/or monitoring of BLMIS' performance of the investment advisory services which Kingate Management had delegated to BLMIS. In particular:

127.1.1 Mr Grosso and Mr Ceretti failed to give any, or any adequate consideration to the numerous 'red flags' surrounding the operations of BLMIS which:

127.1.1.1 were matters of public information, and of which Mr Grosso and Mr Ceretti accordingly must have been aware; or

127.1.1.2 even if not matters of public information, could reasonably have been discovered, and of which Mr Grosso and Mr Ceretti accordingly should have been aware.

127.1.2 Mr Grosso and Mr Ceretti unreasonably relied on due diligence of BLMIS conducted by third parties, including Tremont.

127.1.3 Mr Grosso and Mr Ceretti failed to conduct any, or any adequate due diligence on BLMIS of their own. In particular:

127.1.3.1 Mr Grosso and Mr Ceretti failed, adequately or at all, to visit BLMIS' premises, inspect BLMIS' operations (including BLMIS' information technology systems), interview Mr Madoff/his associates, review relevant documentation, communicate with BLMIS' auditors and/or review any audit reports prepared for BLMIS, so as to properly understand BLMIS' practices and procedures, and internal controls.

127.1.3.2 Mr Grosso and Mr Ceretti failed, adequately or at all, to investigate BLMIS' auditor, or to confirm that it was capable of such a large-scale audit – for example, by checking the public peer review list maintained by the American Institute of Certified Public Accountants.

127.1.3.3 Alternatively, Mr Grosso and Mr Ceretti failed, adequately or at all, critically to assess or independently to verify anything which they were shown, told or learned.

127.1.4 Mr Grosso and Mr Ceretti failed, adequately or at all, critically to assess or independently verify the regular reports and other documentation produced by BLMIS in respect of the Funds, including trade confirmations and the Monthly Statements. In particular, they failed, adequately or at all:

127.1.4.1 independently to verify the existence and value of the assets in which BLMIS had purportedly invested the Funds' monies, as described in those reports – for example, by requesting any certificate of title from an independent third party;

- 127.1.4.2 independently to verify that the trades by which BLMIS had purportedly invested the Funds' monies, as described in the reports, had actually taken place, at the reported prices – for example, by comparing the reported prices of the purported trades with the range in prices actually traded in the market on the day/s in question;
- 127.1.4.3 critically to assess or independently to verify the volumes of those trades, including how they could be accomplished without impacting the market; and/or
- 127.1.4.4 critically to assess or independently to verify the existence of the counter-parties to those trades, or their ability to perform their obligations.
- 127.1.5 Mr Grosso and Mr Ceretti failed, adequately or at all to investigate the number of traders at BLMIS responsible for executing the split-strike conversion strategy, and/or their identity.
- 127.1.6 Mr Grosso and Mr Ceretti failed, adequately or at all, critically to assess the question why BLMIS' split-strike conversion strategy, which was based (in part) on market timing, involved pulling out of the market at the end of each quarter and/or year.
- 127.1.7 Mr Grosso and Mr Ceretti failed, adequately or at all, critically to assess the question how BLMIS' returns could be lawfully achieved, given that basic, industry standard, statistical analysis indicated that those returns (especially their lack of volatility) were highly improbable.
- 127.2 Further or alternatively, Mr Grosso and Mr Ceretti failed, adequately or at all, to disclose to Kingate Management or the Funds:
 - 127.2.1 the existence of any of the 'red flags' surrounding the operations of BLMIS of which they were, or should have been aware;
 - 127.2.2 any particular on-going risks in relation to BLMIS, and the Funds' investment strategy of investing all monies raised from investors exclusively with BLMIS, of which they were, or should (if they had conducted adequate due diligence on BLMIS) have been aware.
- 127.3 Further or alternatively, Mr Grosso and Mr Ceretti failed, adequately or at all, to ensure that FIM took any of the steps set out in paragraphs 127.1-127.2 above.
- 128 By reason of these breaches of duty, the Funds have suffered loss and damage. The Funds repeat paragraph 108 above.

Claim against Mr Grosso and Mr Ceretti for negligent misstatement

129 By reason of the following facts and matters, Mr Grosso and Mr Ceretti personally, as directors of FIM Ltd, and principals of FIM Advisers, owed to the Funds a tortious duty to take reasonable care to ensure that the statements made in the Performance Summaries and/or the Board Reports were true:

129.1 Mr Grosso and Mr Ceretti assumed a personal responsibility to the Funds to take reasonable care to ensure that the statements made in the Performance Summaries and/or the Board Reports were true. In particular:

129.1.1 The Funds repeat paragraphs 126.1.1-126.1.5 above.

129.1.2 Mr Grosso and Mr Ceretti were personally involved in the preparation of the Performance Summaries and/or the Board Reports. For example, weekly faxes from BLMIS setting out the purported market value of each fund's investments (which must have been used, among other materials, in the preparation of the Performance Summaries and/or the Board Reports) were sent to the attention of Mr Ceretti.

129.1.3 The Board Reports were orally presented, by telephone, to the board of Kingate Management and the boards of the Funds by Mr Grosso.

129.2 The Funds in fact relied on Mr Grosso and Mr Ceretti to take reasonable care to ensure that the statements made in the Performance Summaries and/or the Board Reports were true, and on the statements made, by:

129.2.1 not questioning with Kingate Management (or its delegates or FIM) the investment strategy decided upon by Kingate Management and/or FIM, of investing all monies raised from investors exclusively with BLMIS; and

129.2.2 continuing to transfer all such monies to BLMIS for investment.

129.3 In all the circumstances, that reliance was reasonable. The Funds repeat paragraph 126.3 above.

129.4 In all the circumstances, Mr Grosso and Mr Ceretti knew, or ought to have known, or intended that the Funds would, or would be likely to rely on the statements made in the Performance Summaries and/or the Board Reports. In particular, Mr Grosso and Mr Ceretti knew, or ought to have known, or intended that:

129.4.1 the Performance Summaries were distributed by Kingate Management to investors in the Funds;

129.4.2 the Board Reports were provided by FIM to the boards of the Funds; and

129.4.3 Kingate Management would, or was likely to rely on the statements made in the Performance Summaries and/or the Board Reports in the performance and/or delegation of the performance of its services under the Manager Agreements, which would have a direct and substantial effect on the Funds.

129.5 The Performance Summaries and/or the Board Reports contained material misstatements. The Funds repeat paragraph 121 above.

130 In breach of the duty set out in paragraph 129 above, Mr Grosso and Mr Ceretti failed to take reasonable care to ensure that the statements made in the Performance Summaries and/or the Board Reports were true. In particular:

130.1 Mr Grosso and Mr Ceretti failed, adequately or at all, critically to assess or independently to verify the information provided by BLMIS, including the Monthly Statements, on the basis of which FIM prepared the Performance Summaries and/or the Board Reports. In particular, Mr Grosso and Mr Ceretti failed, adequately or at all:

130.1.1 independently to verify the existence or value of the assets in which BLMIS had purportedly invested the Funds' monies – for example, by requesting any certificate of title from an independent third party;

130.1.2 independently to verify that the trades by which BLMIS had purportedly invested the Funds' monies had actually taken place, at the reported prices – for example, by comparing the reported prices of the purported trades with the range in prices actually traded in the market on the day/s in question;

130.1.3 critically to assess or independently to verify the volumes of those trades, including how they could be accomplished without impacting the market; and/or

130.1.4 critically to assess or independently to verify the existence of the counter-parties to those trades, or their ability to perform their obligations.

130.2 More generally:

130.2.1 Mr Grosso and Mr Ceretti failed to conduct any, or any adequate on-going due diligence on BLMIS and/or monitoring of BLMIS' performance of the investment advisory services which Kingate Management had delegated to BLMIS. The Funds repeat paragraph 127.1 above.

130.2.2 Mr Grosso and Mr Ceretti failed, adequately or at all, to disclose to the Funds:

130.2.2.1 the existence of any 'red flags' surrounding the operations of BLMIS of which they were aware, or should have been aware;

130.2.2.2 any particular on-going risks in relation to BLMIS, and the Funds' investment strategy of investing all monies raised from investors exclusively with BLMIS, of which they were, or should (if they had conducted reasonable due diligence) have been aware.

130.3 Further or alternatively, Mr Grosso and Mr Ceretti failed, adequately or at all, to ensure that FIM took any of the steps set out in paragraphs 130.1-130.2 above.

131 By reason of these breaches of duty, the Funds have suffered loss and damage. The Funds repeat paragraph 108 above.

Remedy against Mr Grosso and Mr Ceretti for breach of tortious duty of care and/or negligent misstatement

132 By reason of the claims set out in paragraphs 126-128 and 129-131 above, the Funds are entitled to damages against Mr Grosso and Mr Ceretti, to be assessed.

INTEREST

133 The Funds seek an order that the Defendants and each of them should pay:

133.1 compound interest on all amounts due to the Funds, as damages and/or a restitutionary remedy pursuant to the common law and/or equitable jurisdiction of the Court, at such rate, for such periods and compounded at such periodic rests as the Court considers appropriate;

133.2 alternatively, interest on all amounts due to the Funds pursuant to statute, at such rate and for such periods as the Court considers appropriate.

AND THE CLAIMANTS CLAIM:

Against Kingate Management

(1) Orders for restitution, as follows:

(a) an order that Kingate Management pay to Kingate Global the amount of US\$254,478,999.69; and

(b) an order that Kingate Management pay to Kingate Euro, the amount of 56,226,531.48 Euros.

(2) Alternatively:

(a) an order that Kingate Management pay:

(i) Kingate Global the amount of US\$254,478,999.69; and

- (ii) Kingate Euro the amount of 56,226,531.48 Euros;
- (b) alternatively:
 - (i) a declaration that overpaid fees in the amount of US\$254,478,999.69 and/or their traceable proceeds constituted property to which Kingate Global retained legal title and/or its traceable proceeds, together with an order that Kingate Management return those fees and/or their traceable proceeds to Kingate Global; and
 - (ii) a declaration that overpaid fees in the amount of 56,226,531.48 Euros and/or their traceable proceeds constituted property to which Kingate Euro retained legal title and/or its traceable proceeds, together with an order that Kingate Management return those fees and/or their traceable proceeds to Kingate Euro.
- (3) Alternatively:
 - (a) a declaration that Kingate Management held overpaid fees and/or their traceable proceeds in the amount of US\$254,478,999.69 on resulting, alternatively constructive trusts for Kingate Global from the moment of receipt, together with an order that Kingate Management account to Kingate Global in respect of those fees and/or their proceeds; and
 - (b) a declaration that Kingate Management held overpaid fees and/or their traceable proceeds in the amount of 56,226,531.48 Euros on resulting, alternatively constructive trusts for Kingate Euro from the moment of receipt, together with an order that Kingate Management account to Kingate Euro in respect of those fees and/or their proceeds.
- (4) Damages for breach of contractual and/or tortious duties of care and/or negligent misstatement, to be assessed.

Against FIM

- (1) Damages for breach of tortious duty of care and/or negligent misstatement, to be assessed

Against the Shareholders

- (1) Orders for restitution, as follows:
 - (a) an order that the Shareholders pay to Kingate Global, the amount of US\$254,478,999.69, alternatively, the amount of the fees overpaid by Kingate Global and/or their traceable proceeds, which were paid on by Kingate Management to the Shareholders; and

(b) an order that the Shareholders pay to Kingate Euro, the amount of 56,226,531.48 Euros, alternatively, the amount of the fees overpaid by Kingate Euro and/or their traceable proceeds, which were paid on by Kingate Management to the Shareholders.

(2) Alternatively:

(a) an order that the Shareholders pay the Funds the amount of the overpaid fees and/or their traceable proceeds which were paid on by Kingate Management to the Shareholders;

(b) alternatively, a declaration that the overpaid fees and/or their traceable proceeds which were paid on by Kingate Management to the Shareholders constituted property to which the Funds retained legal title and/or its traceable proceeds, together with an order that the Shareholders return those fees and/or their traceable proceeds to the Funds.

(3) Alternatively, a declaration that the Shareholders held on resulting, alternatively constructive trusts for the Funds, from the moment of receipt or subsequently, the overpaid fees and/or their traceable proceeds which were paid on by Kingate Management to the Shareholders, together with an order that the Shareholders account to the Funds in respect of those fees and their proceeds.

Against Mr Grosso and Mr Ceretti

(1) Orders for restitution, as follows:

(a) an order that Mr Grosso and Mr Ceretti pay to Kingate Global the amount of US\$254,478,999.69, alternatively, the amount of the fees overpaid by Kingate Global and/or their traceable proceeds which were paid on by Kingate Management and then by the Shareholders to Mr Grosso and Mr Ceretti; and

(b) an order that Mr Grosso and Mr Ceretti pay to Kingate Euro, the amount of 56,226,531.48 Euros, alternatively, the amount of the fees overpaid by Kingate Euro and/or their traceable proceeds which were paid on by Kingate Management and then by the Shareholders to Mr Grosso and Mr Ceretti.

(2) Alternatively:

(a) an order that Mr Grosso and Mr Ceretti pay the Funds the amount of the overpaid fees and/or their traceable proceeds which were paid on by Kingate Management and then by the Shareholders to Mr Grosso and Mr Ceretti;

(b) alternatively, a declaration that the overpaid fees and/or their traceable proceeds which were paid on by Kingate Management and then by the Shareholders to Mr Grosso and Mr Ceretti constituted property to which the Funds retained legal title and/or its traceable proceeds, together with an order that Mr Grosso and Mr Ceretti return those fees and/or their traceable proceeds to the Funds.

- (3) Alternatively, a declaration that Mr Grosso and Mr Ceretti held on resulting, alternatively constructive trusts for the Funds, from the moment of receipt or subsequently, the overpaid fees and/or their traceable proceeds which were paid on by Kingate Management and then by the Shareholders to Mr Grosso and Mr Ceretti, together with an order that Mr Grosso and Mr Ceretti account to the Funds in respect of those fees and their proceeds.
- (4) Damages for breach of tortious duty of care and/or negligent misstatement, to be assessed

Against the Investment Companies

(1) Orders for restitution, as follows:

- (a) an order that the Investment Companies pay to Kingate Global the amount of the fees overpaid by Kingate Global and/or their traceable proceeds which were paid on by Kingate Management and then by the Shareholders to the Investment Companies; and
- (b) an order that the Investment Companies pay to Kingate Euro the amount of the fees overpaid by Kingate Euro and/or their traceable proceeds which were paid on by Kingate Management and then by the Shareholders to the Investment Companies.

(2) Alternatively,

- (a) an order that the Investment Companies pay to the Funds the amount of the overpaid fees and/or their traceable proceeds which were paid on by Kingate Management and then by the Shareholders to the Investment Companies;
- (b) alternatively, a declaration that the overpaid fees and/or their traceable proceeds which were paid on by Kingate Management and then by the Shareholder to the Investment Companies constituted property to which the Funds retained legal title and/or its traceable proceeds, together with an order that the Investment Companies return those fees and/or their traceable proceeds to the Funds.

- (3) Alternatively, a declaration that the Investment Companies held on resulting, alternatively constructive trusts for the Funds, from the moment of receipt or subsequently, the overpaid fees and/or their traceable proceeds which were paid on by Kingate Management and then by the Shareholders to the Investment Companies, together with an order that the Investment Companies account to the Funds in respect of those fees and their proceeds.

Against all Defendants

- (1) Interest

~~DATED this 20th day of January 2011~~

SEDGWICK CHUDLEIGH

Attorneys for the Plaintiffs

Amended the 13th day of February, 2012, under RSC, Order 20, Rule 3.

DATED this 13th day of February 2012

Sedgwick Chudleigh

SEDGWICK CHUDLEIGH

Attorneys for the Plaintiffs

IN THE SUPREME COURT OF BERMUDA

CIVIL JURISDICTION

COMMERCIAL LIST

2011: 454

BETWEEN:

KINGATE GLOBAL FUND LIMITED (IN LIQUIDATION)

First Plaintiff

KINGATE EURO FUND LIMITED (IN LIQUIDATION)

Second Plaintiff

and

KINGATE MANAGEMENT LIMITED

First Defendant

FIM LIMITED

Second Defendant

FIM ADVISERS LLP

Third Defendant

FIRST PENINSULA TRUSTEES LIMITED (AS TRUSTEE OF THE ASHBY TRUST)

Fourth Defendant

PORT OF HERCULES TRUSTEES LIMITED (AS TRUSTEE OF THE EL PRELA TRUST)

Fifth Defendant

ASHBY HOLDING SERVICES LIMITED

Sixth Defendant

EL PRELA GROUP HOLDING SERVICES LIMITED

Seventh Defendant

MR CARLO GROSSO

Eighth Defendant

MR FEDERICO CERETTI

Ninth Defendant

Annex A

Kingate Global Fund
Transfers to and from Madoff

Data From BLNIS Trustee

Date	Trfr out of Madoff	Trfr into Madoff
02/03/1994		\$ 2,000,000.00
1994 - \$	6,937.03	
1995 - \$	17,895.00	
1995		\$ 22,410,000.00
26-Dec-95		\$ 3,200,000.00
04-Jan-96		\$ 4,000,000.00
05-Feb-96		\$ 4,450,000.00
05-Apr-96		\$ 2,400,000.00
05-May-96		\$ 700,000.00
05-Jun-96		\$ 7,500,000.00
02-Jul-96		\$ 6,500,000.00
08-Jul-96		\$ 1,500,000.00
07-Aug-96		\$ 4,500,000.00
09-Sep-96		\$ 11,200,000.00
06-Oct-96		\$ 8,500,000.00
07-Nov-96		\$ 9,000,000.00
05-Dec-96		\$ 9,500,000.00
00-Jan-97		\$ 11,000,000.00
08-Feb-97		\$ 13,000,000.00
10-Mar-97		\$ 3,200,000.00
17-Mar-97 - \$	3,200,000.00	
08-Apr-97		\$ 15,000,000.00
09-May-97		\$ 20,000,000.00
29-Jun-97		\$ 22,000,000.00
09-Jul-97		\$ 27,000,000.00
11-Aug-97		\$ 12,000,000.00
00-Sep-97		\$ 7,000,000.00
09-Oct-97		\$ 7,000,000.00
19-Nov-97		\$ 27,500,000.00
08-Jan-98		\$ 19,000,000.00
09-Feb-98		\$ 25,000,000.00
09-Mar-98		\$ 21,000,000.00
08-Apr-98		\$ 45,000,000.00
09-May-98		\$ 30,000,000.00
05-Jun-98		\$ 19,000,000.00
05-Jul-98		\$ 62,000,000.00
03-Jul-98		\$ 3,000,000.00
07-Aug-98		\$ 47,000,000.00
09-Sep-98		\$ 15,000,000.00
21-Oct-98		\$ 8,000,000.00
13-Nov-98		\$ 10,000,000.00
14-Jan-99		\$ 7,000,000.00
01-Feb-99		\$ 7,000,000.00
04-Feb-99		\$ 15,000,000.00
05-Mar-99		\$ 15,000,000.00
08-Apr-99		\$ 15,000,000.00
05-May-99		\$ 15,000,000.00
11-May-99		\$ 7,000,000.00
14-May-99 - \$	7,000,000.00	
02-Jun-99		\$ 15,000,000.00
02-Jul-99		\$ 15,000,000.00
29-Jul-99		\$ 15,000,000.00
10-Aug-99		\$ 15,000,000.00
09-Sep-99		\$ 20,000,000.00
05-Oct-99		\$ 15,000,000.00
10-Nov-99		\$ 10,000,000.00
08-Dec-99		\$ 15,000,000.00
12-Jan-00		\$ 15,000,000.00
03-Mar-00		\$ 15,000,000.00
12-May-00 - \$	30,000,000.00	
19-Jun-00		\$ 3,000,000.00
08-Sep-00		\$ 20,000,000.00
05-Oct-00		\$ 20,000,000.00
05-Nov-00		\$ 20,000,000.00
17-Nov-00		\$ 20,000,000.00
26-Dec-00		\$ 20,000,000.00
04-Jan-01		\$ 50,000,000.00
26-Jan-01		\$ 50,000,000.00
28-Nov-05 - \$	40,300,000.00	
14-Dec-05 - \$	45,000,000.00	
20-Jan-06 - \$	35,000,000.00	
21-Feb-06 - \$	30,000,000.00	
21-Apr-06 - \$	20,000,000.00	
16-May-06 - \$	15,000,000.00	
16-Jun-06 - \$	30,000,000.00	
10-Jul-06 - \$	50,000,000.00	
17-Oct-08 - \$	50,000,000.00	
28-Nov-08 - \$	50,000,000.00	
- \$	400,254,792.00	\$ 547,250,000.00
Gross Transfers to Madoff		\$ 597,600,000.00
Net Transfer to Madoff		\$ 597,600,000.00

Data from ELNLS Friction

[illegible]

IN THE SUPREME COURT OF BERMUDA

CIVIL JURISDICTION

COMMERCIAL LIST

2011: 454

B E T W E E N:

KINGATE GLOBAL FUND LIMITED (IN LIQUIDATION)

First Plaintiff

KINGATE EURO FUND LIMITED (IN LIQUIDATION)

Second Plaintiff

and

KINGATE MANAGEMENT LIMITED

First Defendant

FIM LIMITED

Second Defendant

FIM ADVISERS LLP

Third Defendant

FIRST PENINSULA TRUSTEES LIMITED (AS TRUSTEE OF THE ASHBY TRUST)

Fourth Defendant

PORT OF HERCULES TRUSTEES LIMITED (AS TRUSTEE OF THE EL PRELA TRUST)

Fifth Defendant

ASHBY HOLDING SERVICES LIMITED

Sixth Defendant

EL PRELA GROUP HOLDING SERVICES LIMITED

Seventh Defendant

MR CARLO GROSSO

Eighth Defendant

MR FEDERICO CERETTI

Ninth Defendant

Annex B

Single Management Limited
 Statement of Operations and Retained Earnings
 Years ended December 31, 2013-2007

	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993	1992	1991	1990	1989	1988	1987	1986	1985	1984	1983	1982	1981	1980	1979	1978	1977	1976	1975	1974	1973	1972	1971	1970	1969	1968	1967	1966	1965	1964	1963	1962	1961	1960	1959	1958	1957	1956	1955	1954	1953	1952	1951	1950	1949	1948	1947	1946	1945	1944	1943	1942	1941	1940	1939	1938	1937	1936	1935	1934	1933	1932	1931	1930	1929	1928	1927	1926	1925	1924	1923	1922	1921	1920	1919	1918	1917	1916	1915	1914	1913	1912	1911	1910	1909	1908	1907	1906	1905	1904	1903	1902	1901	1900	1899	1898	1897	1896	1895	1894	1893	1892	1891	1890	1889	1888	1887	1886	1885	1884	1883	1882	1881	1880	1879	1878	1877	1876	1875	1874	1873	1872	1871	1870	1869	1868	1867	1866	1865	1864	1863	1862	1861	1860	1859	1858	1857	1856	1855	1854	1853	1852	1851	1850	1849	1848	1847	1846	1845	1844	1843	1842	1841	1840	1839	1838	1837	1836	1835	1834	1833	1832	1831	1830	1829	1828	1827	1826	1825	1824	1823	1822	1821	1820	1819	1818	1817	1816	1815	1814	1813	1812	1811	1810	1809	1808	1807	1806	1805	1804	1803	1802	1801	1800	1799	1798	1797	1796	1795	1794	1793	1792	1791	1790	1789	1788	1787	1786	1785	1784	1783	1782	1781	1780	1779	1778	1777	1776	1775	1774	1773	1772	1771	1770	1769	1768	1767	1766	1765	1764	1763	1762	1761	1760	1759	1758	1757	1756	1755	1754	1753	1752	1751	1750	1749	1748	1747	1746	1745	1744	1743	1742	1741	1740	1739	1738	1737	1736	1735	1734	1733	1732	1731	1730	1729	1728	1727	1726	1725	1724	1723	1722	1721	1720	1719	1718	1717	1716	1715	1714	1713	1712	1711	1710	1709	1708	1707	1706	1705	1704	1703	1702	1701	1700	1699	1698	1697	1696	1695	1694	1693	1692	1691	1690	1689	1688	1687	1686	1685	1684	1683	1682	1681	1680	1679	1678	1677	1676	1675	1674	1673	1672	1671	1670	1669	1668	1667	1666	1665	1664	1663	1662	1661	1660	1659	1658	1657	1656	1655	1654	1653	1652	1651	1650	1649	1648	1647	1646	1645	1644	1643	1642	1641	1640	1639	1638	1637	1636	1635	1634	1633	1632	1631	1630	1629	1628	1627	1626	1625	1624	1623	1622	1621	1620	1619	1618	1617	1616	1615	1614	1613	1612	1611	1610	1609	1608	1607	1606	1605	1604	1603	1602	1601	1600	1599	1598	1597	1596	1595	1594	1593	1592	1591	1590	1589	1588	1587	1586	1585	1584	1583	1582	1581	1580	1579	1578	1577	1576	1575	1574	1573	1572	1571	1570	1569	1568	1567	1566	1565	1564	1563	1562	1561	1560	1559	1558	1557	1556	1555	1554	1553	1552	1551	1550	1549	1548	1547	1546	1545	1544	1543	1542	1541	1540	1539	1538	1537	1536	1535	1534	1533	1532	1531	1530	1529	1528	1527	1526	1525	1524	1523	1522	1521	1520	1519	1518	1517	1516	1515	1514	1513	1512	1511	1510	1509	1508	1507	1506	1505	1504	1503	1502	1501	1500	1499	1498	1497	1496	1495	1494	1493	1492	1491	1490	1489	1488	1487	1486	1485	1484	1483	1482	1481	1480	1479	1478	1477	1476	1475	1474	1473	1472	1471	1470	1469	1468	1467	1466	1465	1464	1463	1462	1461	1460	1459	1458	1457	1456	1455	1454	1453	1452	1451	1450	1449	1448	1447	1446	1445	1444	1443	1442	1441	1440	1439	1438	1437	1436	1435	1434	1433	1432	1431	1430	1429	1428	1427	1426	1425	1424	1423	1422	1421	1420	1419	1418	1417	1416	1415	1414	1413	1412	1411	1410	1409	1408	1407	1406	1405	1404	1403	1402	1401	1400	1399	1398	1397	1396	1395	1394	1393	1392	1391	1390	1389	1388	1387	1386	1385	1384	1383	1382	1381	1380	1379	1378	1377	1376	1375	1374	1373	1372	1371	1370	1369	1368	1367	1366	1365	1364	1363	1362	1361	1360	1359	1358	1357	1356	1355	1354	1353	1352	1351	1350	1349	1348	1347	1346	1345	1344	1343	1342	1341	1340	1339	1338	1337	1336	1335	1334	1333	1332	1331	1330	1329	1328	1327	1326	1325	1324	1323	1322	1321	1320	1319	1318	1317	1316	1315	1314	1313	1312	1311	1310	1309	1308	1307	1306	1305	1304	1303	1302	1301	1300	1299	1298	1297	1296	1295	1294	1293	1292	1291	1290	1289	1288	1287	1286	1285	1284	1283	1282	1281	1280	1279	1278	1277	1276	1275	1274	1273	1272	1271	1270	1269	1268	1267	1266	1265	1264	1263	1262	1261	1260	1259	1258	1257	1256	1255	1254	1253	1252	1251	1250	1249	1248	1247	1246	1245	1244	1243	1242	1241	1240	1239	1238	1237	1236	1235	1234	1233	1232	1231	1230	1229	1228	1227	1226	1225	1224	1223	1222	1221	1220	1219	1218	1217	1216	1215	1214	1213	1212	1211	1210	1209	1208	1207	1206	1205	1204	1203	1202	1201	1200	1199	1198	1197	1196	1195	1194	1193	1192	1191	1190	1189	1188	1187	1186	1185	1184	1183	1182	1181	1180	1179	1178	1177	1176	1175	1174	1173	1172	1171	1170	1169	1168	1167	1166	1165	1164	1163	1162	1161	1160	1159	1158	1157	1156	1155	1154	1153	1152	1151	1150	1149	1148	1147	1146	1145	1144	1143	1142	1141	1140	1139	1138	1137	1136	1135	1134	1133	1132	1131	1130	1129	1128	1127	1126	1125	1124	1123	1122	1121	1120	1119	1118	1117	1116	1115	1114	1113	1112	1111	1110	1109	1108	1107	1106	1105	1104	1103	1102	1101	1100	1099	1098	1097	1096	1095	1094	1093	1092	1091	1090	1089	1088	1087	1086	1085	1084	1083	1082	1081	1080	1079	1078	1077	1076	1075	1074	1073	1072	1071	1070	1069	1068	1067	1066	1065	1064	1063	1062	1061	1060	1059	1058	1057	1056	1055	1054	1053	1052	1051	1050	1049	1048	1047	1046	1045	1044	1043	1042	1041	1040	1039	1038	1037	1036	1035	1034	1033	1032	1031	1030	1029	1028	1027	1026	1025	1024	1023	1022	1021	1020	1019	1018	1017	1016	1015	1014	1013	1012	1011	1010	1009	1008	1007	1006	1005	1004	1003	1002	1001	1000	999	998	997	996	995	994	993	992	991	990	989	988	987	986	985	984	983	982	981	980	979	978	977	976	975	974	973	972	971	970	969	968	967	966	965	964	963	962	961	960	959	958	957	956	955	954	953	952	951	950	949	948	947	946	945	944	943	942	941	940	939	938	937	936	935	934	933	932	931	930	929	928	927	926	925	924	923	922	921	920	919	918	917	916	915	914	913	912	911	910	909	908	907	906	905	904	903	902	901	900	899	898	897	896	895	894	893	892	891	890	889	888	887	886	885	884	883	882	881	880	879	878	877	876	875	874	873	872	871	870	869	868	867	866	865	864	863	862	861	860	859	858	857	856	855	854	853	852	851	850	849	848	847	846	845	844	843	842	841	840	839	838	837	836	835	834	833	832	831	830	829	828	827	826	825	824	823	822	821	820	819	818	817	816	815	814	813	812	811	810	809	808	807	806	805	804	803	802	801	800	799	798	797	796	795	794	793	792	791	790	789	788	787	786	785	784	783	782	781	780	779	778	777	776	775	774	773	772	771	770	769	768	767	766	765	764	763	762	761	760	759	758	757	756	755	754	753	752	751	750	749	748	747	746	745	744	743	742	741	740	739	738	737	736	735	734	733	732	731	730	729	728	727	726	725	724	723	722	721	720	719	718	717	716	715	714	713	712	711	710	709	708	707	706	705	704	703	702	701	700	699	698	697	696	695	694	693	692	691	690	689	688	687	686	685	684	683	682	681	680	679	678	677	676	675	674	673	672	671	670	669	668	667	666	665	664	663	662	661	660	659	658	657	656	655	654	653	652	651	650	649	648	647	646	645	644	643	642	641	640	639	638	637	636	635	634	633	632	631	630	629	628	627	626	625	624	623	622	621	620	619	
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IN THE SUPREME COURT OF BERMUDA

CIVIL JURISDICTION

COMMERCIAL LIST

2011: 454

BETWEEN:

KINGATE GLOBAL FUND LIMITED (IN LIQUIDATION)

First Plaintiff

KINGATE EURO FUND LIMITED (IN LIQUIDATION)

Second Plaintiff

and

KINGATE MANAGEMENT LIMITED

First Defendant

FIM LIMITED

Second Defendant

FIM ADVISERS LLP

Third Defendant

FIRST PENINSULA TRUSTEES LIMITED (AS TRUSTEE OF THE ASHBY TRUST)

Fourth Defendant

PORT OF HERCULES TRUSTEES LIMITED (AS TRUSTEE OF THE EL PRELA TRUST)

Fifth Defendant

ASHBY HOLDING SERVICES LIMITED

Sixth Defendant

EL PRELA GROUP HOLDING SERVICES LIMITED

Seventh Defendant

MR CARLO GROSSO

Eighth Defendant

MR FEDERICO CERETTI

Ninth Defendant

Annex C
